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Attorneys for Defendant Caterpillar Inc.  
(erroneously served and sued as Caterpillar, Inc.)

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

NINILCHIK CHARTERS, LLC,  
Plaintiff,

vs.

CATERPILLAR, INC., a Delaware  
corporation,  
Defendant.

Case No. 3:04-cv-250 (TMB)

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*Ninilchik Charters, LLC v. Caterpillar, Inc.*  
Joint Stipulation Modifying Scheduling and Planning Order  
Case No. 3:04-cv-250 (TMB)  
(8367-2/249686)

**JOINT STIPULATION MODIFYING SCHEDULING AND PLANNING ORDER**

It is hereby Stipulated by the parties to the above matter, plaintiff NINILCHIK CHARTERS, LLC and defendant CATERPILLAR INC., through their counsel of record, that the Scheduling and Planning Order in this matter be amended as follows:

(1) All discovery commenced in time to be completed by November 31, 2006 ("discovery close date"), and all associated disclosure deadlines shall travel with the discovery close date.

This Stipulation is entered on the bases that on April 7, 2006, defendant Caterpillar Inc. filed a Motion for Summary Judgment, which, if granted would result in the dismissal of this matter in its entirety. Since the filing of this Motion, both parties have been in constant communication regarding the further discovery that each side would like to conduct before trial, including out of state expert depositions and further destructive testing and analysis. However, both parties have been reluctant to proceed with the referenced discovery, and the substantial additional expenses that would result, until a ruling on Caterpillar's Motion for Summary Judgment has been issued.

As shown by the briefing that has been submitted, both parties have been diligent in the development of their respective claims and defenses in preparation for trial. However, in the best interests of their clients, the parties did not want to engage in further discovery which would prove highly expensive for both parties in the event Caterpillar's Motion is granted. Accordingly, while the parties acknowledge and respect the Court's reluctance to grant such continuances, the parties are in agreement that the continuance is appropriate to allow the Court sufficient time to analyze Caterpillar's Motion for Summary Judgment and to allow for the proper preparation of this matter for trial, should

it be necessary.

DATED at Anchorage, Alaska, this 31<sup>st</sup> day of July, 2006.

DAVIS, RANDALL  
ANDERSON & MATHIS, P.C.  
Attorneys for Plaintiff Ninilchik Charters, LLC

By: s/ Leonard R. Anderson (consent)  
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DATED at Anchorage, Alaska, this 31<sup>st</sup> day of July, 2006.

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Certificate of Service

I hereby certify that on July 31, 2006, a copy of the foregoing Joint Stipulation Modifying Scheduling and Planning Order was served electronically on:

Leonard R. Anderson  
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405 W. 36th Avenue, Suite 200  
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s/ Frank A. Pfiffner